

Interpretation of 12 C.F.R. § 545.121

Summary Conclusion: OTS regulation § 545.121 provides for mandatory indemnification by a federal savings association (subject to prior notice to OTS) if there is a final judgment on the merits in favor of the officer, director, or employee claiming indemnification. A dismissal with prejudice is not a final judgment on the merits, therefore, indemnification is not mandatory under the regulation.

Date: March 15, 2002

Subjects: Home Owners' Loan Act/Savings Association Powers

P-2002-2



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

March 15, 2002

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Re: Request for Interpretation of
12 C.F.R. § 545.121

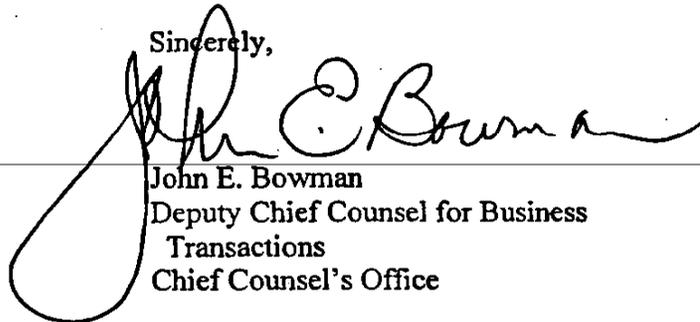
Dear []:

This is in response to your letters of December 28, 2001, and February 6, 2002, requesting our views as to whether a former director of a savings association that was merged into your client is entitled to mandatory indemnification under 12 C.F.R. § 545.121, under the facts you have presented. The regulation provides for mandatory indemnification by a federal savings association (subject to prior notice to OTS) if there is a final judgment on the merits in favor of the officer, director, or employee claiming indemnification. The regulation specifically permits, but does not require indemnification, in the case of a settlement, provided certain other requirements are satisfied.

In our opinion, a dismissal with prejudice under the circumstances described in your letter is not a final judgment on the merits for purposes of 12 C.F.R. § 545.121. Therefore, in our opinion, indemnification of the former director is not mandatory under § 545.121.

We hope this letter is responsive to your concerns. If you have any further questions, please call David A. Permut, Senior Attorney, at (202) 906-7505.

Sincerely,



John E. Bowman
Deputy Chief Counsel for Business
Transactions
Chief Counsel's Office

cc: Robert C. Albanese,
Northeast Regional Director